

227254

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, DC**

---

**FINANCE DOCKET NO. 35304**

---

**SAN FRANCISCO BAY RAILROAD- MARE ISLAND  
NOTICE OF EXEMPTION - CALIFORNIA NORTHERN RAILROAD**

---

**MOTION OF CITY OF VALLEJO TO INTERVENE AND  
FOR LEAVE TO FILE A REPLY TO A REPLY**

Dated: June 4, 2010

Communications with respect to this  
document should be addressed to:

**FREDERICK G. SOLEY**  
City Attorney of the City of Vallejo  
Claudia M. Quintana  
Assistant City Attorney  
Vallejo City Hall  
555 Santa Clara St., 3d Fl.  
Vallejo, CA, 94590

**Charles A. Spitulnik**  
**Allison I. Fultz**  
Kaplan Kirsch & Rockwell LLP  
1001 Connecticut Ave., N.W., Suite  
800  
Washington, DC 20036  
(202) 955-5600

**Attorneys for City of Vallejo**

ENTERED  
Office of Proceedings  
JUN 8 - 2010  
Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, DC**

---

**FINANCE DOCKET NO. 35304**

---

**SAN FRANCISCO BAY RAILROAD- MARE ISLAND  
NOTICE OF EXEMPTION – CALIFORNIA NORTHERN RAILROAD**

---

**MOTION OF CITY OF VALLEJO TO INTERVENE AND  
FOR LEAVE TO FILE A REPLY TO A REPLY**

On September 28, 2009, San Francisco Bay Railroad – Mare Island (“SFBR”) filed a Notice of Exemption for the operation of an approximately 8-mile long segment of track in Vallejo, California (“SFBR Notice”). This Board published the SFBR Notice on October 14, 2009, and the exemption became effective on October 28, 2009. On March 19, 2010, Lennar Mare Island LLC (“LMI”) filed a Petition in this proceeding to revoke SFBR’s exemption (“LMI Petition to Revoke”). LMI is the master developer of the former naval base on Mare Island, which is being converted to civilian uses. LMI Petition to Revoke at 3. On March 15, 2010, SFBR filed a Petition to institute a declaratory order proceeding and seeking expedited relief in STB Finance Docket No. 35360 with respect to the same segment at issue in this case. The City is a party to that proceeding and now seeks leave to intervene in the instant matter for the specific

purpose of correcting an inaccurate characterization of the City's status in pleadings submitted by SFBR.

The parties, facts and circumstances of both Finance Docket Nos. 35304 and 35360 are identical. Approximately 2.5 miles of the line segment addressed in the SFBR Notice is owned by the City of Vallejo, extending from a point on or near G Street in Mare Island, proceeding across the Wichels Causeway, and continuing to a junction with lines connecting to the national rail system in the vicinity of the Flosden Yard near El Sendero Ct. in Vallejo. The remainder of the track addressed in this proceeding is located on Mare Island and is under the control of LMI. LMI Petition to Revoke at 3. Accordingly, as the owner of a portion of the track at issue and as a party in Finance Docket No. 35360, the related proceeding, the City requests that the Board grant this request for leave to intervene so that the City may fully defend its interests in both proceedings.

The City also hereby moves this Board pursuant to 49 C.F.R. § 1117.1 for leave to file a reply to the Reply of SFBR to the LMI Petition to Revoke filed in this proceeding on April 7, 2010 ("Reply of SFBR"). The City respectfully submits that, even though the rules that govern this proceeding prohibit the filing of a reply to a reply (49 C.F.R. §1104.13(c)), this Board should exercise its discretion to permit the filing of this Reply to allow the City to correct the record in this proceeding and ensure that the Board's decision herein is based on a

complete and accurate understanding of the pertinent facts. Granting this motion will not broaden the issues raised in this proceeding, because the City seeks only to correct the record as to matters raised by SFBR in the SFBR Reply and as a result will not prejudice the parties to this proceeding.

This Board permits parties to a proceeding to file a reply to a reply when that submission “. . . provides a more complete record, clarifies the arguments, will not prejudice any party, and does not unduly prolong the proceeding. It is within the Board’s discretion to permit otherwise impermissible filings . . .” STB Docket No. AB-6 (Sub-No. 468X), *BNSF Railway Company — Abandonment Exemption — In Kootenai County, ID, slip op.*, at 1 (Service Date November 27, 2009).

In the SFBR Reply, SFBR mischaracterized the City as the “residual common carrier” on the segment at issue in this proceeding. SFBR Reply at 2. Consistent with this Board’s decisions exercising its discretion to permit such filings, the Board should permit the City to file a reply in order to correct this mischaracterization and ensure that the Board has a complete and accurate record upon which to base its decision herein. In anticipation of a favorable ruling on this Motion, the City is tendering its Reply to the SFBR Reply along with this Motion.

WHEREFORE, the City respectfully requests this Board to grant its Motion to Intervene and for Leave to File a Reply to a Reply in this proceeding, and accept the Reply of the City of Vallejo, California, that is tendered herewith.

Respectfully submitted,

FREDERICK G. SOLEY  
Vallejo, CA City Attorney



---

Claudia M. Quintana  
Assistant City Attorney  
Vallejo City Hall  
555 Santa Clara St., 3d Fl.  
Vallejo, CA, 94590

Charles A. Spitulnik  
Allison I. Fultz  
Kaplan Kirsch & Rockwell LLP  
1001 Connecticut Ave., N.W., Suite 800  
Washington, DC 20036  
(202) 955-5600

Attorneys for City of Vallejo

Dated: June 4, 2010

**Certificate of Service**

I hereby certify that I have this 8th day of ~~May~~ <sup>June</sup> caused to be served a copy of the foregoing MOTION OF THE CITY OF VALLEJO, CALIFORNIA, TO INTERVENE AND FOR LEAVE TO FILE A REPLY TO A REPLY to be served by first class mail, postage prepaid upon the following:

John F. McHugh  
6 Water Street, Suite 401  
New York, NY 10004

David L. Meyer  
Karen E. Escalante  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Charles A. Spitulnik  
Charles A. Spitulnik